[English Translation - 英譯本]

HCMA 236/2021

[2022] HKCFI 3343

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**COURT OF FIRST INSTANCE**

CASE NO.: MAGISTRACY APPEAL NO 236 OF 2021

(ON APPEAL FROM WKCC 4075 OF 2020)

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| BETWEEN |  |  |
|  | HKSAR | Respondent |
|  | and |  |
|  | CHOY YUK LING（蔡玉玲） | Appellant |

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Before: Hon Alex Lee J in Court

Date of Hearing: 29 August 2022

Date of Judgment: 7 November 2022

**JUDGEMENT**

**Introduction**

1. The appellant was charged[[1]](#footnote-1) with two counts of “knowingly making a statement which is false in a material particular for the purpose of obtaining a certificate under the Road Traffic Ordinance” (Charge 1 and Charge 2). The particulars of the two offences are similar, under which it was alleged that the appellant knowingly made a statement which was false in a material particular for the purpose of obtaining a certificate of vehicle registration particulars (the “**Vehicle Certificate**”) of a private car LV755 (the “**Vehicle Concerned**”) in Hong Kong on 17 May 2020 and 10 June 2020 respectively, by stating that she applied for the Vehicle Certificates for the following traffic and transport related purpose, namely, “traffic and transport related matters” other than legal proceedings and sale and purchase of a vehicle.
2. The appellant pleaded not guilty to the above charges and was tried before Ms Ivy Chui, Principal Magistrate (the “**Magistrate**”). On 22 April 2021, the Magistrate found the appellant guilty of the two charges and imposed a fine of $3,000 for each of the charges.
3. The appellant appeals[[2]](#footnote-2) against the two convictions.

**The prosecution case**

1. At the trial, the prosecution did not call any witness to give evidence since the prosecution evidence was not in dispute. Both parties agreed to the following facts by way of a set of “admitted facts”[[3]](#footnote-3) (**P5**):
   1. In 2017, PW1 purchased the Vehicle Concerned. Thereafter, he registered with the Transport Department in the name of “Conred Industries Limited” as the registered owner of the Vehicle Concerned. With the consent of the proprietor of another company (“Prosperous Property Development”), PW1 also used the address of “Prosperous Property Development” in Tai Po as the registered address of the Vehicle Concerned with the Transport Department.
   2. The public may apply to the Transport Department in person, by post or through the application program set up on the Transport Department’s website for a Vehicle Certificate issued under regulation 4(2) of the Road Traffic (Registration and Licensing of Vehicles) Regulations[[4]](#footnote-4) (the “**Regulations**”).
   3. **P2** is a printout of the website that accurately shows the layout and terms of the relevant online application program. The online application will go through the following five steps:
      1. Step 1: Identity verification. Applicants who apply through personal e-Cert are required to input (i) their Hong Kong Identity Card number or passport number, and (ii) the storage medium and PIN of their digital certificate;
      2. Step 2: Filling in the application information, including (i) the applicant’s name in English, daytime contact number and residential address/company address; and (ii) the registration number of the vehicle for which the particulars of registration are requested, and the date and time at which the certificate of relevant particulars are requested. In addition, applicants will choose one of the following purposes for applying for the vehicle certificate:
         * 1. Legal proceedings;
           2. Sale and purchase of vehicle; or
           3. Other traffic and transport related matters;
      3. Step 3: Declaration, signature and submission of application. Applicants will declare that all the information submitted is complete and accurate, and tick and make the following declaration (hereinafter the “**Declaration**”):

“I hereby declare that I understand that the personal data provided by a certificate of particulars of vehicle shall only be used for activities relating to traffic and transport matters. I have read through and understand the content of this application form, and accept all the terms and conditions stated therein.”

Applicants must tick and make the Declaration before proceeding to the next step;

* + 1. Step 4: Payment. Applicants may pay by PPS or with credit card; and
    2. Step 5: Printing and obtaining the vehicle certificate. After completing the above steps, applicants may download the applied vehicle certificate at this step. The vehicle certificate states the name and address of the registered owner of the relevant vehicle.
  1. On 17 May and 10 June 2020, the appellant applied for the Vehicle Certificates of the Vehicles Concerned for 21 July 2019 and 10 June 2020 on the website of the Transport Department according to the procedures shown in P2. In both applications, the appellant:
     1. verified with the personal e-Cert, and inputted her correct name in English, address, Hong Kong identity card number, telephone number and the correct digital certificate PIN in step 1;
     2. selected “other traffic and transport related matters” in step 2 as the purpose of applying for a vehicle certificate;
     3. declared in step 3 that all the information filled in was complete and accurate, ticked and made the Declaration;
     4. obtained a vehicle certificate[[5]](#footnote-5) for the Vehicle Concerned on the relevant date upon completion of the payment procedure in step 4. The two Vehicle Certificates stated that the registered owner of the Vehicle Concerned was “Conred Industries Limited”, and its registered address was the above-mentioned address in Tai Po.
  2. At about 3:18 pm on 22 June 2020, the appellant and another female reporter of Radio Television Hong Kong (“RTHK”) arrived at the Tai Po address of “Prosperous Property Development” and presented the RTHK press card (**P4**) to the staff member (**PW2**). The appellant told PW2 that she would like to interview relevant person(s) of “Conred Industries Limited”, but PW2 said that he/she did not know that company. The appellant left a contact number and then left the place with the female reporter.
  3. On 23 June 2020, PW2 reported the incident to his/her employer and provided PW1 with the defendant’s contact phone number for follow-up. Later on the same day, PW1 contacted the appellant. The appellant told PW1 over the phone that she was a reporter from RTHK and asked PW1 about the Vehicle Concerned having been photographed by citizen/s in Yuen Long on 21 July 2019.
  4. From 29 June to 6 July 2020, the appellant made several telephone calls to interview PW1 on the matters related to the Vehicle Concerned, asking whether PW1 drove the Vehicle Concerned to Yuen Long on the night of 21 July 2019.
  5. On 13 July 2020, RTHK broadcast the TV program *Hong Kong Connection—7.21 Who Owns the Truth* (“***Hong Kong Connection***”) written and directed by the appellant, which included the footage (**P3A**) showing the English name of “Prosperous Property Development” and an excerpt (**P3B**) containing the recording of the conversation between PW1 and the appellant in the above-mentioned telephone interview.
  6. On 3 November 2020, the appellant was arrested by the police at her residence.

1. Both parties agreed to play the video footage (**P3**) of *Hong Kong Connection* in court. In addition, both parties produced two witness statements[[6]](#footnote-6) (**P6** and **P7**) from Mr Shiu, Executive Officer (Licensing Office) of the Transport Department. Mr Shiu’s statements mainly explained the method of applying for a vehicle certificate, as well as the procedures and steps of online application, the contents of which were roughly the same as the admitted facts. Mr Shiu added in the witness statements that regarding the method of the online application on the website of the Transport Department, the Department did not provide applicants with any option other than the purposes of “legal proceedings”, “sale and purchase of vehicle” and “other traffic and transport related matters”.

**The defence case**

1. After the prosecution closed its case, the defence made a halfway submission on one of the elements of the charge— “false”. After hearing the submissions of the parties, the Magistrate ruled that prima facie evidence of the two charges was established, and the appellant had a case to answer.
2. The appellant chose not to testify or call any witness.

**Reasons for conviction**

1. At the trial, the prosecution and the defence did not dispute that each of the two charges contains the following elements of offence[[7]](#footnote-7) :
   1. The appellant made a statement for the purpose of obtaining a “driving licence, vehicle licence, permit, certificate or other documents” under the Ordinance;
   2. She made the statement on a “material particular”;
   3. The said statement was one which was “false” in a material particular; and
   4. She “knowingly” made the statement which was false in a material particular.
2. Regarding element (1), based on the undisputed facts, the Magistrate found that the appellant made a statement[[8]](#footnote-8) for the purpose of obtaining the Vehicle Certificate for the Vehicle Concerned.
3. Regarding element (2), the Magistrate made the following findings:
   1. The Commissioner for Transport (“**Commissioner**”) shall safeguard the registered vehicle owners and shall not arbitrarily disclose information for access by others. Therefore, the Magistrate did not agree with the defence submission that, whether or not the purpose of an applicant obtaining a vehicle certificate was for the purpose of “traffic and transport”, this was not one of the matters that the Commissioner may consider when deciding to issue a vehicle certificate[[9]](#footnote-9).
   2. Considering the legislative purpose of the relevant provisions, and taking into account the context of the provisions, the Magistrate accepted the prosecution’s argument that the legislature could not have intended the right of members of the public under regulation 4(2) of the “Regulations” to obtain vehicle particulars be given to a person who makes an application through false statements. Therefore, she did not accept the argument of the defence; that is, as long as an applicant pays the relevant fees, the Commissioner must issue a certificate as a matter of law without any room for discretion[[10]](#footnote-10).
   3. She did not accept the defence’s submission that the Commissioner has no power to refuse to issue a vehicle certificate to an applicant on the ground that the applicant seeks information other than for the purpose of “traffic and transport”[[11]](#footnote-11).
   4. The purpose for which an applicant applies for particulars of vehicles is definitely one of the material issues. If the relevant purpose is irrelevant to traffic and transport matters, the Commissioner has no duty to, and even ought not disclose the personal data of the registered vehicle owner maintained in the register of vehicles to an applicant making an application for a purpose that is irrelevant to “traffic and transport matters”[[12]](#footnote-12).

Based on the above, the Magistrate considered that the correct interpretation of regulation 4(2) of the “Regulation” is that the Commissioner is only required to supply the particulars of vehicles maintained in the register of vehicles for “traffic and transport” related purpose. Therefore, the appellant’s declaration of the purpose for applying for the particulars of the vehicle was undoubtedly a statement on a “material particular”, as such statement would obviously affect the Commissioner’s decision on whether the application would be approved and whether the Commissioner’s duty to supply the particulars of vehicles under regulation 4(2) of the “Regulations” is applicable to such decision[[13]](#footnote-13).

1. Regarding element (3), the Magistrate ruled that the “purpose related to traffic and transport matters” is clearly targeted at the requirement for the appellant to explain the purpose for which she applied for the vehicle certificate, rather than the purpose for which the Vehicle Concerned had been used[[14]](#footnote-14). It is immaterial whether the appellant had a good motive in seeking the information. If an applicant considered that the options provided by the online application program of the Transport Department were limited or that there was no option to meet her genuine needs, the applicant should consider obtaining relevant information through other channels, such as submitting a separate written application to the Transport Department. An applicant should not make a false statement[[15]](#footnote-15) even if none of the three options provided by the Transport Department applied. The purpose of the appellant’s application for the vehicle certificate was to seek the name and address of the registered owner of the Vehicle Concerned and to conduct interviews and reports, but those were irrelevant to “other traffic and transport related matters”[[16]](#footnote-16).
2. Regarding element (4), the Magistrate held that since the appellant should make the declaration pursuant to the instructions when applying for a vehicle certificate online, she undoubtedly knew clearly that she had to provide true and correct information[[17]](#footnote-17). However, when the appellant made the application for the vehicle certificate, she clearly knew that she was making the application for the purpose of “searching”, “interviewing” and “reporting”. All of the above purposes are irrelevant to the three options provided by the Transport Department, or “other traffic and transport related matters”[[18]](#footnote-18). The defendant nevertheless ticked the option of “other traffic and transport related matters” and made a declaration confirming that the information and purpose were true. The Magistrate held that the prosecution evidence was sufficient to prove that the appellant had knowingly made a statement which was false in a material particular[[19]](#footnote-19).
3. Based on the above, the Magistrate found the appellant guilty of both charges.

**Grounds of appeal**

1. It was submitted in the appellant’s “perfected grounds of appeal” that the Magistrate erroneously found that:
   1. the appellant made a “false” statement;
   2. that statement was one on a “material particular”;
   3. the appellant “knowingly” made such statement which was false in a material particular.

**Relevant provisions**

1. The long title of the “Ordinance” states its legislative purpose as follows:

“To provide for the regulation of road traffic and the use of vehicles and roads (including private roads) and for other purposes connected therewith.”

1. Section 6 of the “Ordinance” is the empowering provision relevant to this case, which authorises the Secretary for Transport and Logistics (the “**Secretary**”) to make regulations for the matters set out in the section:

“**6. Regulation of registration and licensing of vehicles**

* 1. The Secretary may make regulations to provide for—
     1. the registration of vehicles [[20]](#footnote-20) within any class specified in Schedule 1 and the transfer and cancellation of registration;

…

(e) the maintenance of a register of motor vehicles and the issue of extracts therefrom;

…

(r) the issue of duplicates of any document issued under this Ordinance; and

…

(t) generally carrying into effect the provisions of this Ordinance relating to the registration and licensing of vehicles.

…

* 1. The Chief Executive in Council may make regulations to provide for—
     1. the fees that may be charged for registration, licensing, permits, certificates of fitness and extracts from the register and the waiving, exemption, reduction or refund of fees; …”

1. Regulation 4 of the “Regulations” is the subsidiary legislation made pursuant to, among others, section 6 of the “Ordinance”[[21]](#footnote-21), which stipulates the duty of the Commissioner to maintain a register of vehicles and to provide particulars of vehicles in the register:

**“4. Register of vehicles**

* 1. The Commissioner shall maintain a register of vehicles containing the particulars[[22]](#footnote-22) specified in Schedule 1.
  2. The Commissioner shall, on payment of the fee [[23]](#footnote-23) prescribed in Schedule 2, supply to any person making application for any particulars in the register in respect of a vehicle a certificate stating such particulars.
  3. The Commissioner may waive the fee payable in respect of any application under subregulation (2) where he is satisfied—
     1. that the applicant has good reason for requiring the particulars; and
     2. it is in the public interest that the particulars be disclosed.”

(Underlines added)

1. Section 111 of the “Ordinance” provides as follows:

“(3) A person who, for the purpose of—

1. obtaining any driving licence, vehicle licence, permit, certificate or other document under this Ordinance;
2. …

knowingly makes any statement which is false in a material particular commits an offence and is liable to a fine of $5,000 and to imprisonment for 6 months.

(4) If it appears to the Commissioner that any declaration or statement made by the person to whom a licence, permit, certificate, notice or other document was issued under this Ordinance, for the purpose of obtaining the issue or variation of such document was false in a material particular, the Commissioner, after giving to such person not less than 7 days’ notice in writing of his intention so to do, may cancel such document, and if such person fails to deliver such document to the Commissioner within 10 days of receiving such notice, he commits an offence and is liable to a fine of $2,000.”

(Underlines added)

1. In my opinion, the grounds of appeal (1) and (2) involve and include the following two core issues:
   1. Whether the word “shall” in regulation 4(2) of the “Regulations” should be interpreted as indicating a mandatory obligation in its literal meaning—that is, if an applicant has paid the relevant fees, the Commissioner has no choice but to supply the applicant with a certificate; and
   2. Section 111(3)(a) of the “Ordinance” does not specify what “material particular” means. At the trial, the parties cited *Kong Sau Mei & Ors v Director of Immigration*[[24]](#footnote-24)and agreed that the statements on “material particular” were those that might affect the decision of the Commissioner. Thus, the dispute between the parties was whether the appellant’s statement as to her intended use of the vehicle certificate was a “material particular”.

The above two core issues are interrelated because, if the word “shall” in regulation 4(2) of the “Regulations” is mandatory, then as long as an applicant has paid the relevant fee, the purpose for which he/she applies for a vehicle certificate shall not affect the Commissioner’s decision to issue a certificate. In other words, if the appellant’s argument on core issue (1) is correct, the statement as to the purpose for obtaining the vehicle certificates made by the appellant, who had paid the relevant fees, will be insignificant to the Commissioner’s decision, whether or not the statement was true, because it will not be a “material particular”. If the foundation of “material particular” fails, the charges will naturally be untenable.

**Interpretation of the provisions**

*Principles of Statutory Interpretation*

1. Clearly, the above two core issues fall within the scope of statutory interpretation. From the written submissions of both the appellant and the respondent, the following legal principles regarding the interpretation of the provisions are not in dispute.
2. As a general rule, subsidiary legislation is interpreted in the same way as principal legislation, but another consideration is this: the former derives its authority from the enactment of the latter and therefore it should be interpreted in the light of the latter: see *Bennion, Bailey and Norbury on Statutory Interpretation*, 8 ed, §3.17; and *Lai Chee-ying v Commissioner of Police*[[25]](#footnote-25).
3. In the modern approach of statutory interpretation, the proper starting point is to look at the relevant terms or provisions. Interpretation of statutory language generally requires reference to its context and purpose, not just at the stage when ambiguity may be thought to arise, see: *HKSAR v Lam Kwong Wai*[[26]](#footnote-26) ; and *Leung Chun Ying v Ho Chun Yan Albert*[[27]](#footnote-27). The context of a statutory provision should be taken in its widest sense and includes the other provisions of the relevant statute and the existing state of the relevant law: *HKSAR v Cheung Kwun Yin*[[28]](#footnote-28). The purpose of a statutory provision may be evident from the provision itself, the relevant report of the Law Reform Commission, the explanatory memorandum to the bill, or a statement made by the responsible official in relation to the bill in the Legislative Council[[29]](#footnote-29).
4. Even so, the purpose of doing so is to ascertain the legislative intent of the statutory language, and in this respect, the court cannot interpret a statutory provision incapable of bearing by the language in which the provision is interpreted in its context and statutory purpose: *HKSAR v Lam Kwong Wai*, above[[30]](#footnote-30); and *China Field Ltd v Appeal Tribunal (Buildings) (No. 2)*[[31]](#footnote-31).
5. Furthermore, there is a principle in statutory interpretation that no one shall be penalised except under clear law. Thus, when considering opposing interpretations of a statutory provision, the court presumes that the legislature intends to observe this principle and should strive to avoid adopting an interpretation which penalises a person when the legislature’s intention to do so is doubtful. Similarly, as part of the principle against doubtful penalisation, there is a presumption against the imposition of a statutory interference with freedom of association or of speech, etc., without clear words: *T v Commissioner of Police*[[32]](#footnote-32).

*Legislative intent of the “Ordinance”*

1. To apply the above principles to this case, I must first confirm the legislative intent behind the “Ordinance” and the “Regulations”. A natural starting point is the long title of the “Ordinance”: *HKSAR v Cheung Wai Kwong*[[33]](#footnote-33). The long title can be broadly divided into the following three purposes, that is, the “Ordinance” is to provide for:
2. the regulation of road traffic,
3. the use of vehicles and roads,
4. for other purposes connected therewith.
5. Mr Chan, representing the appellant, forcefully submitted that the long title of the “Ordinance” is short and general, but the “Ordinance” itself covers many different matters related to road traffic. Reading the long title itself does not reveal how the statute should be enacted to most effectively achieve the general legislative purpose of road traffic control. In this regard, I do not agree. I think the scope of the first two purposes of the long title, namely “regulation of road traffic” and “use of vehicles and roads (including private roads)” is clear and closely related. Literally, (iii) is based on (i) and (ii), referring to the purposes related to the former two and of a supplementary nature. In my opinion, the three purposes listed in the long title are not independent of, but complementary to each other.
6. I have not forgotten that purpose (iii) was added in 1956[[34]](#footnote-34). One of the purposes of amending the legislation in 1956 was to introduce the predecessor of the “Regulations” [[35]](#footnote-35) . At the first reading meeting of the Legislative Council on 11 July 1956, the then Attorney General explained as follows when introducing the revised bill[[36]](#footnote-36):

“Sir, one of the main purposes of this Bill is to amend the Vehicle and Road Traffic Ordinance to enable up-to-date regulations to be made. Although the existing Ordinance became law in 1947, the regulations at present in force date back to 1912. They have been extensively amended in the course of the years that have passed, and honourable Members will appreciate that in consequence they are now in an unsatisfactory state; they are in point of fact rather in a mess. It is proposed therefore to replace them by separate sets of regulations dealing with particular aspects of traffic control, using that expression with a wide connotation. Two sets of the proposed regulations are now ready and the others will be presented for enactment as they are completed.”

(Underlines added)

From the above, even if the term “other purposes connected therewith” is given a broad meaning, it always refers to those matters related to “traffic control”. Furthermore, judging from the contents of the various parts of the “Ordinance”[[37]](#footnote-37), especially the various items of subsidiary legislation enacted pursuant to Part 2 of the “Ordinance”[[38]](#footnote-38), all of them meet the purpose stated in the long title. Therefore, I consider that the three purposes stated in the long title of the “Ordinance” are sufficiently clear. Their common purpose is traffic control, thus involving the regulation of “road *traffic*”, “the *use* of vehicles and roads”, and other related matters, rather than generally referring to all possible matters related to vehicles and roads.

1. The appellant cited section 74 of the “Ordinance”:

“**74. Certificate as to registered owner of vehicle or holder of driving licence**

* 1. A document purporting—
     1. to be signed by or on behalf of the Commissioner or the Commissioner of Police; and
     2. to certify—
        1. that according to the register of motor vehicles maintained under this Ordinance a person specified in the certificate was registered as the owner of a motor vehicle specified therein; or
        2. that according to the register of driving licences maintained under this Ordinance a person specified in the certificate was the holder of a driving licence specified therein,

shall be admitted in any civil or criminal proceedings before any court on its production without further proof.”

(Underlines added)

The appellant contends that the above provision shows that the legislature’s intention is that the particulars of vehicles maintained by the Commissioner under the “Regulations” may be used in “any” legal proceedings, which are not limited to those proceedings related to “traffic and transport” matters.

1. Regarding the above submissions, I agree with the Magistrate’s finding below[[39]](#footnote-39):

“42. Regarding the above provisions... I accept the prosecution’s argument that section 74 is only concerned with the admissibility of evidence, that is, specifying that if the certificate meets the relevant conditions, the document can be produced in court as evidence to prove the matters mentioned in the certificate. This is obviously a completely different document from the vehicle certificate that the Commissioner for Transport shall provide to a member of the public who makes an application under regulation 4(2) of the ‘Regulations’. I consider that this provision does not support the defence’s argument that the Commissioner has an absolute duty to provide members of the public with information on the particulars of vehicles maintained in the register of vehicles for any reason or for any purpose.”

Furthermore, I agree with the respondent’s argument that the documents referred to in section 74 also include the certificates used to certify “the holder of a driving licence”, but the latter are not the particulars of vehicles which the Commissioner maintains in the register of vehicles under regulation 4 of the “Regulations”, and there is no provision under the “Ordinance” that stipulates that the Commissioner has a duty to provide the relevant particulars to the person making the application. Apparently, the certificate referred to in section 74 of the “Ordinance” and the “vehicle certificate” under regulation 4(2) of the “Regulation” are two completely different documents. Finally, the provisions relating to the admissibility of evidence under section 74 only apply if the Commissioner or the Commissioner of Police decides to issue the relevant certificate to an applicant. Therefore, I do not think that section 74 of the “Ordinance” goes beyond the legislative purpose stated in the long title, nor do I think that it is conducive to the interpretation of regulation 4 of the “Regulations”.

1. Based on the above, I believe that the three legislative purposes stated in the long title of the “Ordinance” are conducive to explaining why the legislature, by means of section 6, empowers the Commissioner to make regulations concerning such matters as the registration of motor vehicles, the maintenance of register of motor vehicles, and the issuance of extracts from registers. As the Magistrate said[[40]](#footnote-40):

“35. Undoubtedly, the legislative purpose of the ‘Ordinance’ is to provide for ‘the regulation of road traffic’, ‘the use of vehicles and roads’ and for other ‘purposes connected therewith’. These purposes are all related to ‘traffic and transport’ matters. I accept the prosecution’s argument that the duty of the Commissioner to maintain the register of vehicles under regulation 4(1) of the ‘Regulations’ as set forth by the relevant authority under section 6(1)(e) of the ‘Ordinance’ is also clearly set forth based on the purpose related to ‘traffic and transport’. …”

*The authority’s interpretation of the “Regulations” and its practice*

1. Mr Chan submitted that the “Ordinance” had been conferring members of the public the right to inspect the register for decades. There are many different situations under which the members of the public need the information contained in the register of vehicles, including carrying out traffic and transport related procedures. There is nothing unusual that the “Regulations” stipulates that the Commissioner has an absolute duty to provide the information in the register of vehicles to facilitate public search and enhance transparency. Relevant to the above argument is a discussion paper (the “**Discussion Paper**”)[[41]](#footnote-41) submitted by the Transport and Housing Bureau on “Issue of Certificates of Particulars of Motor Vehicles” at the meeting of the Panel on Transport of the Legislative Council on 11 July 2011. Paragraph 3 of the Discussion Paper has the following interpretation of regulation 4 of the “Regulations”:

“3. Among the 18 items of particulars contained in the register, 15 are related to vehicles (‘vehicle particulars’), while the remaining three are particulars pertaining to registered vehicle owners (items (iv) to (vi) in Annex B). Under Regulation 4(2) of the Regulations, the Commissioner shall, on payment of a prescribed fee, supply to any person making application for any particulars in the register in respect of a vehicle a Certificate stating such particulars. The Commissioner has no discretion in withholding the release of such particulars, including the personal particulars of the relevant registered owner, provided that the prescribed fee is paid by the applicant. The Commissioner does not have power under the existing law to ask the applicant to provide reasons for obtaining the Certificate.”

(Underlines added)

According to the above interpretation, the Bureau proposed to “strengthen the existing administrative measures, and codify them in the

laws to provide a proper statutory footing to facilitate enforcement” and amend the “Regulations”. However, the Panel on Transport of the Legislative Council did not reach any conclusions[[42]](#footnote-42) on the Bureau’s proposal. Therefore, the administrative measures referred to in the Discussion Paper have been in use since 2003, namely:

1. adding a note to the application form to remind the applicant that the personal data of the registered vehicle owner can only be used for traffic and transport related matters;
2. requiring the applicant to state the purpose of applying for the certificate and confirming that he/she understands that it is an offence to make a false statement; and
3. allowing the Transport Department to provide the registered vehicle owner with the personal data of the applicant upon request.
4. I agree with the Magistrate that the purpose of the Discussion Paper is, as stated in its first paragraph, to “[propose] to improve the issuing mechanism of Certificate of Particulars of Motor Vehicles” and to “[seek] Members’ views on the proposal” accordingly. Paragraph 4 of the Paper also reiterated the original intention of the legislature, that is, “the information on the Certificate should only be used for traffic and transport related purpose”. This has all along been the legislative intent of maintaining registers of vehicles under the Road Traffic Ordinance[[43]](#footnote-43).
5. However, as the Magistrate stated[[44]](#footnote-44), in fairness to Mr Chan, representing the appellant, he also agreed that the above document dated the year 2011 would be of limited use as to how the court should interpret the “Regulations”. More importantly, for the reasons mentioned below, I believe that due to the limited scope of the Discussion Paper, the legal views expressed in paragraph 3 are not comprehensive enough, nor can they accurately focus on the issues faced by the Commissioner:
   1. In my opinion, the key issue is not whether the Commissioner has the “discretion” to refuse an applicant’s application, but under the then (and prevailing) legal framework, whether he can lawfully and properly supply an applicant with the registration data of another person regardless of the applicant’s purpose; and
   2. If not, it will be the Commissioner’s duty to know the applicant’s purpose in advance. Therefore, the key point is not whether the Commissioner has the power to require an applicant to provide reasons for obtaining the certificate. If the Commissioner does not have sufficient information in this regard, then he would not be able to perform his duties lawfully and properly under regulation 4 of the “Regulations”.

I am not saying that the Discussion Paper is not useful to this appeal and I will get back to it when I deal with the appellant’s grounds of appeal.

*“Regulations” and the legal framework*

1. As mentioned above, the legal views expressed in paragraph 3 of the Discussion Paper are not comprehensive. This is because there is an established principle of statutory construction that, without violating its context, a statute is taken to be “always speaking”, see: *HKSAR v Wong Yuk Man* [[45]](#footnote-45); *Joyce v Director of Public Prosecutions*[[46]](#footnote-46); and *HKSAR v Yuong Ho-Cheung*[[47]](#footnote-47). Therefore, to change with the times, raising awareness of human rights and evolution of the legal framework, things that were considered permissible and acceptable to the public in the past may not be the same now. Certainly, the court must start with the premise that the interpretation of the relevant provisions shall not deviate from the context of the statute, see: *HKSAR v Chan Chun Kit*[[48]](#footnote-48). I would bear in mind the guidance of *Lord Wilberforce* in *Royal College of Nursing v Department of Health and Social Security*[[49]](#footnote-49). In *R (Quintavalle) v Health Secretary*[[50]](#footnote-50), *Lord Bingham* cited *Lord Wilberforce*’s judgment in *Royal College of Nursing* and said:

“10. ... More pertinent is the guidance given by the late Lord Wilberforce in his dissenting opinion in *Royal College of Nursing of the United Kingdom v Department of Health and Social Security* [1981] AC 800. The case concerned the Abortion Act 1967 and the issue which divided the House was whether nurses could lawfully take part in a termination procedure not known when the Act was passed. Lord Wilberforce said, at p 822:

‘In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament’s policy or intention is directed to that state of affairs. Leaving aside cases of omission by inadvertence, this being not such a case, when a new state of affairs, or a fresh set of facts bearing on policy, comes into existence, the courts have to consider whether they fall within the parliamentary intention. They may be held to do so, if they fall within the same genus of facts as those to which the expressed policy has been formulated. They may also be held to do so if there can be detected a clear purpose in the legislation which can only be fulfilled if the extension is made. How liberally these principles may be applied must depend upon the nature of the enactment, and the strictness or otherwise of the words in which it has been expressed. The courts should be less willing to extend expressed meanings if it is clear that the Act in question was designed to be restrictive or circumscribed in its operation rather than liberal or permissive. They will be much less willing to do so where the subject matter is different in kind or dimension from that for which the legislation was passed. In any event there is one course which the courts cannot take, under the law of this country; they cannot fill gaps; they cannot by asking the question ‘What would Parliament have done in this current case – not being one in contemplation – if the facts had been before it?’ attempt themselves to supply the answer, if the answer is not to be found in the terms of the Act itself.’

Both parties relied on this passage, which may now be treated as authoritative …”

(Underlines added)

1. In *Hong Kong Mobile Television Network Ltd & Anor v Office of the Communications Authority*[[51]](#footnote-51), Hon Thomas Au J (as he then was) further pointed out that statutory interpretation requires an understanding of the circumstances when the statute was enacted in order to ascertain its purpose and meaning. This is not inconsistent with the concept of “always speaking” applicable to statutes and they can even be described as “existing in parallel”; in fact, if the legislative purpose and meaning of the statutes are not contradicted, it is permissible and even necessary to interpret the statutes to cover constantly evolving and changing situations.
2. In applying the above principles to this case, I have not ignored Mr Chan’s submission that the Hong Kong legislature has always referred to similar legislation in the United Kingdom. When the predecessor[[52]](#footnote-52) of the “Ordinance” was enacted, the government expressly referred to the corresponding legislation in the United Kingdom[[53]](#footnote-53). However, regulation 4(2) of the “Regulations” (and its predecessors) deliberately chose not to follow the corresponding UK provision that conferred a discretion, but instead insisted on using the mandatory term “shall”.
3. In view of the above submissions, I believe that the similar statutory provisions in the United Kingdom are of reference value to the interpretation of the “Ordinance” and the “Regulations”, but they are not conclusive. As for whether the word “shall” in regulation 4(2) of the “Regulations” means that it is mandatory, I shall come back to it later. In summary, regarding the legislative purpose of the “Ordinance”, I agree with the Magistrate’s findings as follows:

“35. Undoubtedly, the legislative purpose of the ‘Ordinance’ is to provide for ‘the regulation of road traffic’, ‘the use of vehicles and roads’ and for other ‘purposes connected therewith’. These purposes are all related to ‘traffic and transport’ matters. I accept the prosecution’s argument that the Commissioner’s duty to maintain the register of vehicles under regulation 4(1) of the ‘Regulations’ as set forth by the relevant authority under section 6(1)(e) of the ‘Ordinance’ is also clearly set forth based on the ‘traffic and transport’ related purpose. The prosecution cited the following examples, such as that a vehicle may affect other road users when it is on the road. In case of a traffic accident which causes personal injuries or casualties or property damage, the information in the register of vehicles can be used in legal proceedings related to ‘traffic and transport’ (such as traffic accident claims, or recovery of fines or charges). In other examples, unattended vehicles causing inconvenience to others or causing obstruction, which cause inconvenience to other road users, are all related to traffic and transport matters. Those affected need to know who own the vehicles affecting them in order to resolve the inconvenience or hindrance to them, or obtain the compensation to which they are entitled. In those cases, the purpose of ascertaining the identity of the registered vehicle owner is clearly related to ‘traffic and transport’ matters.

…

39. I accept the prosecution’s argument that the legislature, under section 6(1)(e) of the ‘Ordinance’, in empowering the relevant authority to make regulations relating to ‘maintaining registers of motor vehicles and issuing extracts from registers’, had clearly expected that the members of the public would have access to the particulars of vehicles for reasonably necessary purposes for such ‘traffic and transport’ related reasons. This is in line with the legislative purpose of the relevant legislation. The legislature could not have intended that such information could be ‘misused’ at will, or that the public could have access to such material information belonging to others or be given details of vehicles for any purpose.”

As mentioned, the above legislative purpose is naturally applicable to the “Regulations”.

1. In my view, the “Ordinance” and “Regulations” operate under the local legal framework and the personal privacy of vehicle owners is involved in the collection of the personal data of vehicle owners, the maintenance of the register of motor vehicles and the issuance of extracts from the registers by the Department pursuant to the “Regulations”. Therefore, when the court interprets the “Regulations”, it has the power to and should consider the local laws on the protection of personal privacy. In Hong Kong, personal privacy is now protected by Article 39 of the Basic Law[[54]](#footnote-54) and Article 14 of the Hong Kong Bill of Rights Ordinance (Cap. 282 [sic.] of the Laws of Hong Kong)[[55]](#footnote-55). It should be noted that the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong) [[56]](#footnote-56) also provides for the purpose and approach of collecting personal data, accuracy and retention period, use, security, provision and inspection of data subjects by “data users”: see “Data Protection Principle” in Schedule 1 to that Ordinance. As the Personal Data (Privacy) Ordinance is binding on the government[[57]](#footnote-57), the Commissioner, as a “data user”, has a statutory duty to abide by it. Therefore, I agree with the Magistrate that[[58]](#footnote-58):

“... the Department has the power to require registered vehicle owners to submit important information for registration purposes, and at the same time, they shall be responsible for the careful use of the submitted information since any member of the public can use the application program for vehicle certificates, and an applicant may obtain information by searching the register to commit illegal acts, such as revenge or nuisance, against a registered vehicle owner. When registered vehicle owners are required to provide such information to the Department for the purpose of vehicle registration pursuant to the legislation, vehicle owners will not expect their data be used for matters unrelated to traffic and transport. The Commissioner shall protect registered vehicle owners and not arbitrarily disclose the data for access by others.”

1. Mr Chan insisted that both the Basic Law and the Bill of Rights guarantee the freedom of speech and the press[[59]](#footnote-59), including “freedom to seek, receive and impart information and ideas of all kinds”. Furthermore, the public would have a legitimate need to obtain information contained in the register of vehicles under many different circumstances. Against this background, the court should interpret the meaning of “other traffic and transport related matters” in a wide sense and in line with public perception.
2. Regarding the above submissions, I agree that, within reasonable and practicable limits, the government should use its best endeavours to facilitate the public and enhance the transparency of governance. I also acknowledge the significance of the flow of information and freedom of the press to an open and democratic society: *R v Home Secretary, Ex p. Simms*[[60]](#footnote-60); and *Társaság A Szabadságjogokért v Hungary*[[61]](#footnote-61). Nevertheless, I believe that even if “traffic control” is given the widest meaning, facilitating the flow of information and promoting freedom of the press are not within the scope of the duties and authority of the Commissioner under the “Ordinance”, nor are they one of the purposes of the Department to collect personal data from citizens. On the other hand, the Commissioner has a statutory duty to act in accordance with the Personal Data (Privacy) Ordinance. Therefore, protecting the privacy of citizens is a necessary and important consideration for the Department. Taking a step back, if the appellant did not correctly state her real purpose, the Commissioner could hardly take it into consideration, see: *Kong Sau Mei & Ors v Director of Immigration*[[62]](#footnote-62).
3. The appellant emphasised that balancing different interests and enacting relevant laws are the functions of the legislature, and the court should not forcibly change the terms based on modern policy considerations, conferring the Commissioner discretion that basically does not exist under the Ordinance. I do not object to this statement. However, as mentioned above, the crux of the issue is not whether the Commissioner has the relevant “discretion”, but whether he can lawfully and properly supply an applicant with registration information of others under the prevailing legal framework and without the consent of the person concerned. Regarding this point, I note that section 18 (Data access request) of the Personal Data (Privacy) Ordinance is only about “data subjects” requesting “data users” to access their own personal data. In this regard, journalists are no different from others. The purpose of this policy is a choice of the legislature and the court shall respect it. As for the exemption clause for news activities in section 61 of the Ordinance, it does not concern empowering the press to access personal data of others, but dealing with the situation where “data subjects” access their personal data from journalists (as data users). I also note that in the discussion in 2011, the legislature failed to reach consensus on the relevant issues.
4. Based on the above, I believe that when exercising the powers conferred by the “Ordinance” and performing its duties thereunder, the Department shall also consider the personal privacy of vehicle owners, so as to ensure that its actions can meet the four-step “proportionality” test put forward by the Court of Final Appeal in *Hysan Development Co Ltd v Town Planning Board* [[63]](#footnote-63), namely:
   1. The relevant measure must pursue one or more legitimate aim;
   2. Such measure must be rationally connected with advancing that legitimate aim;
   3. The relevant measure must be no more than is necessary to accomplish that legitimate aim; and
   4. Where an encroaching measure has passed the above three steps, the court shall conduct an additional fourth step of analysis, examining whether a reasonable balance has been struck between the social benefits of the measure and the inroads made into the constitutionally protected rights of the individual, examining in particular whether pursuit of that societal interest results in an unacceptably harsh burden on the individual concerned.
5. Based on the above, I consider that the appellant’s submission, namely the word “shall” in regulation 4(2) of the “Regulations” is mandatory, obviously fails to meet the “proportionality” test because the interpretation would involve encroachment upon others’ privacy and is not essential for the Department to regulate the “road traffic” and the “use of vehicles and roads (including private roads)”. Hence, a reasonable balance has not been struck between societal benefits and the inroads made into the constitutionally protected rights of the individual.
6. Therefore, I believe that the only way to expand the right of journalists or other persons to access the information on the register of vehicles under the prevailing legal framework is to go through public consultation and discussion, and then to resolve it by legislation. Regarding this point, I agree with Mr Chan’s submission that “from the standpoint of human rights law, the legislation can impose proportionate restrictions on the media’s right to obtain information on the register of vehicles. However, this needs to be discussed by legislators and backed by unequivocal legislation.”

*Is “shall” necessarily mandatory*

1. That being the case, the next question is given the two different words “shall” and “may” used respectively in regulations 4(2) and (3) of the “Regulations”, whether the former can carry a non-mandatory interpretation: *Bennion, Bailey and Norbury on Statutory Interpretation*, above, at para 21.3(2); and *R (Shropshire and Werkin Fire Authority) v Secretary of State for Home Department*[[64]](#footnote-64). I think it can do so for the following reasons.
2. Firstly, as the Magistrate pointed out[[65]](#footnote-65), the court must consider the principle in section 19 of the Interpretation and General Clauses Ordinance (Cap. 1 of the Laws of Hong Kong) when interpreting an Ordinance:

“An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.”

(Underline added)

1. Secondly, as pointed out by the respondent, in both local and overseas cases, there are many examples where the court interpreted “shall” as non-mandatory in accordance with the legislative intent:
   1. In *HKSAR v Chan Yik Zee and Others*[[66]](#footnote-66), even though section 70 of the Evidence Ordinance (Cap. 8 of the Laws of Hong Kong) states that the deposition of the relevant witnesses “shall” be read and received in evidence, Hon Jackson J ruled, after careful consideration of the legislative purpose of the provision and the principle of fair trial, that the “mandatory” provision could not be the true intent of the legislature.
   2. In *Democratic Party v Secretary for Justice*[[67]](#footnote-67), section 98 of the Companies Ordinance (Cap. 32 of the Laws of Hong Kong) (repealed) empowered members of the public to access the register of members of an incorporated political party. Notwithstanding the use of “shall” in sections 98(1) and (2), Hon Hartmann J (as he then was) ruled, upon consideration of the legislative purpose of the provision and other relevant provisions (especially section 98(4), in which the court had a discretion not to order the company to provide the register available for inspection), that it was not the true intention of the legislature that the right of public inspection under section 98 should be absolute. Such right did not apply to the applications which were irrelevant to the purposes of the inspection as contemplated by that Ordinance.
   3. In *R v Secretary of State for the Home Department, Ex parte Puttick*[[68]](#footnote-68), although taken literally, section 6(2) of the British Nationality Act 1948 stipulates that a foreign woman who is married to a British citizen has a right (“shall be entitled”) to apply to the authorities for British citizenship, the Queen’s Bench Divisional Court held that it was a well-known public policy that the law should not be used to assist criminals to profit from their crimes, and this is true notwithstanding the mandatory provisions of the Act. Therefore, it could not have been the legislative intent that the right would apply to an applicant who used a false identity to enter a marriage. Furthermore, since citizenship was not only a matter of private right but also a matter of public status and concern, it was held that the authority was not obliged to approve the relevant application.
   4. In *R v Register General, Ex parte Smith*[[69]](#footnote-69), section 51(1) of the Adoption Act 1976 stipulates that the authority “shall” provide any dependent who made an application for birth records containing information about their biological parents (after payment of the relevant fee). The English Court of Appeal held that it is a public policy that, even when the legislature enacts statutory obligations in apparently absolute terms, it should be presumed that it did not intend that the exercise of these obligations would enable a person to benefit from past serious crimes or to provide convenience for future serious crimes. It was therefore held that notwithstanding the seemingly absolute wording of the provision, the legislature could not have intended such provision be applied to an applicant who was likely to be a danger to his parents.
2. I bear in mind that the proper interpretation of a statutory provision is that the wording of the provision, its legislative intent and framework must be fully considered, and the court’s interpretation of a different statutory provision in a particular case may not be directly applicable to other cases. I have not neglected that it is the responsibility of the Legislative Council to weigh policies, and the court will only rule that exceptions are implied in an apparently absolute statutory duty in accordance with the principles of public policy recognised in cases under special circumstances and within a narrow scope. The court must therefore exercise caution when invoking policy considerations. I have cited the above cases to illustrate the issue whether or not “shall” is mandatory depends on the legislative intent and the context and meaning of individual provisions.
3. Thirdly, as mentioned above, if the word “shall” in regulation 4(2) of the “Regulations” is mandatory, the “proportionality” test cannot be met. I consider this an example of the “always speaking” rule in statutes. Where the conduct of the appellant fell fairly within the scope of the relevant provisions, it does not involve imposing a non-mandatory interpretation on circumstances unforeseeable at the time when the “Regulations” was enacted: *Joyce v Director of Public Prosecutions*, above.
4. Fourthly, it can be seen from section 111(4) of the “Ordinance” that the right of the members of the public to obtain any document[[70]](#footnote-70) issued under the “Ordinance” is not absolute because that section empowers the Commissioner to, in the circumstances prescribed in that section, cancel the issued documents even if an applicant has paid the fee and the applicant shall also deliver such document to the Commissioner; otherwise, the applicant will commit an offence. In my opinion, the policy behind sections 111(3) and (4) of the “Ordinance” is undoubtedly to prevent and stop applicants from using statements which are false in material particulars in order to obtain permits, certificates or other documents issued by the Department. This is obviously in contradiction to the appellant’s interpretation of regulation 4(2) of the “Regulations”—that is, if an applicant has paid the fee, the Commissioner will have no power to refuse the applicant’s application and must supply the latter with a vehicle certificate. Therefore, I agree with the Magistrate’s ruling that it could not have been the legislature’s intention to allow any person to obtain particulars of vehicles of others by knowingly making a false statement in a material particular[[71]](#footnote-71).
5. Fifthly, should the word “shall” in regulation 4 of the “Regulations” be mandatory, the following situation would have arisen—even if the Commissioner knew that an applicant aimed for illegal purposes, he would have had no power to refuse the application. I do not believe that this is the intention of the Legislative Council.
6. Sixthly, the word “may” is used in regulation 4(3) of the “Regulations” because that section is concerned about the waiver of fee. Hence, it is necessary to indicate that the Commissioner has the corresponding discretion and to introduce regulation 4(3)(a) and (b) on the additional considerations regarding the waiver. Therefore, I consider that interpreting “shall” in regulation 4(2) as non-mandatory is not contradictory to the use of “may” in regulation 4(3).

*Summary*

1. Based on the above, I come to the following conclusion:
   1. The power conferred to the Department by the “Ordinance”, including the power to collect personal data and supply vehicle registration certificates to members of the public, shall be subject to the legislative intent of the “Ordinance” and the rights protected by the Basic Law and other legislation; and
   2. The word “shall” used in regulation 4(2) of the “Regulations” is not mandatory, and the right of the members of the public to obtain the particulars of vehicles from the Department under that regulation is not absolute.
2. Having sorted out the above legal principles, I now deal with the various grounds of appeal of the appellant. Purely for the sake of convenience, I deal with ground of appeal (2) first.

*Ground of Appeal (2): Material particular*

1. I agree with Mr Chan’s submission on the so-called “material particular” as follows:
2. Whether a statement is one in “material particular” depends on whether such statement is likely to affect the Commissioner’s decision to approve or deny the application: *Kong Sau Mei v Director of Immigration*, above;
3. The meaning of “material particular” is an objective question. Even if a question is one which an applicant must fill in or tick in the application form, it may not necessarily be “material particular”; it depends on whether it is necessary when processing the application: *R v Lancaster*[[72]](#footnote-72);
4. “Material particular” refers to an important aspect, a thing which mattered: *Ting James Henry v HKSAR*[[73]](#footnote-73);
5. The answer to this question does not depend on the opinion of any person, not even that of the authority: *Jovcevski v Minister of Immigration, Local Government and Ethnic Affairs* [[74]](#footnote-74) ; and *Minister of Immigration, Local Government and Ethnic Affairs v Dela Cruz*[[75]](#footnote-75).
6. As mentioned above, I consider that if the purpose of an applicant’s request for particulars of vehicles under regulation 4(2) of the “Regulations” does not accord with the legislative intent empowered by the “Ordinance”, the provision of relevant information or documents by the Commissioner to the applicant will not satisfy the “proportionality” test. Not only would that be inappropriate, but also it might even be *ultra vires*. Therefore, I further consider that in order for the Commissioner to ensure that he is properly exercising the power conferred by regulation 4 of the “Regulations”, it is necessary to know beforehand the purpose of an applicant before supplying the applicant with the particulars or documents of the vehicle. I therefore fully agree with the Magistrate’s findings as follows[[76]](#footnote-76):

“39. I accept the prosecution’s submission that the legislature, under section 6(1)(e) of the ‘Ordinance’, in empowering the relevant authority to make regulations relating to ‘maintaining registers of motor vehicles and issuing extracts from registers’, obviously expected that members of the public would have access to the particulars of vehicles for reasonably necessary purposes for these ‘traffic and transport’ related reasons. This is in line with the legislative purpose of the relevant legislation. The legislature could not have intended that such information could be ‘misused’ at will, or that the public could have had access to such material information belonging to others or be given details of vehicles for any purpose.

40. Having carefully considered the submissions of both parties, I do not accept the defence’s argument that the Commissioner has no power to refuse the issuing of a vehicle certificate on the basis that a person is not seeking information for ‘traffic and transport’ purposes. Regarding the question of whether the Commissioner’s duty to provide the particulars of vehicles is applicable for any purpose, I consider that the answer must be ‘no’. Considering the legislative intent of regulation 4 of the ‘Regulations’ and the relevant legal framework, I believe that regulation 4(2) of the ‘Regulations’ is obviously only applicable to applications made for ‘traffic and transport’ related purpose. Therefore, the Commissioner has the power to limit the applications of particulars of vehicles to those made only for ‘traffic and transport’ related purpose, and require an applicant to state the purpose of the application for the particulars of vehicles, so as to ensure that the registered vehicle owner information maintained in the register of vehicles can be used properly in line with the legislative intent.”

1. However, in addition to the above jurisprudential discussion, I also need to consider whether the Department/Commissioner considers the purpose of an applicant as one of the factors that may affect the approval of an application in the actual processing of an application made in accordance with regulation 4 of the “Regulations”. Regarding this point, the Magistrate made the following findings[[77]](#footnote-77):

“43. From the layout and terms of the online application program

of the Transport Department, it is evident that to apply for a vehicle certificate, an applicant must complete five steps according to the instructions in the program, and relevant information must be filled in or options must be ticked in each step. The Department also clearly mentioned in Step 2 the following term: ‘I note that the personal data provided by a certificate of particulars of vehicle should only be used for activities relating to traffic and transport matters’. Then, an applicant is required to choose to apply for a vehicle certificate for the following ‘traffic and transport’ related purposes in Step 2, and three different options are available, namely, (1) legal proceedings; (2) sale and purchase of vehicle; or (3) other traffic and transport related matters. If an applicant does not choose the ‘purpose’ on the program, the applicant will not be able to proceed to the next step. Needless to say, the purpose is definitely one of the key issues. An applicant is required to express the purpose of applying for the particulars of vehicles, the reason or the purpose of the application. In case the relevant purpose is not related to traffic and transport matters, I believe that the Commissioner will have no duty to, and even should not disclose the personal data of the registered vehicle owner maintained in the register of vehicles to an applicant whose purpose for the application is not ‘traffic and transport matters’.

1. Based on the above, I believe that the correct interpretation of regulation 4(2) of the ‘Regulations’ is that the Commissioner is only required to supply the particulars of vehicles maintained in the register of vehicles for ‘traffic and transport’ related purpose. Therefore, the defendant’s declaration of the purpose for applying for the particulars of the vehicle is undoubtedly a statement on ‘material particular’ as such statement will obviously affect the Commissioner’s decision on the approval of the application and the applicability of the Commissioner’s duty to supply the particulars of vehicles under regulation 4(2) of the ‘Regulations’ to that decision.
2. It is my decision that the statement made by the defendant when applying for the vehicle certificate is a statement on the ‘material particular’.”

(Underline added)

1. What will happen if a member of the public applies in person or by post? According to the witness statement (P6) of the representative (Mr Shiu) of the Transport Department, the content and declaration of the online form are the same as those in the form distributed by various branches of the Transport Department. According to his another witness statement (P7), the Department only accepts the three application purposes provided on the form. If an applicant does not tick a purpose, the Department will not process the application on the form. If an applicant adds on his/her own or fills in other application purposes, the Department will not process the application on the form. It is evident that, regardless of the mode of application, the Department will not treat the application differently where an applicant has or has not ticked any option on the form or what option has been selected.
2. Based on the above, I agree with the Magistrate’s finding that the statement made by an applicant as to the purpose of the vehicle certificate is not only likely to affect whether the Commissioner would approve the application, but is also an important consideration; thus, it is undoubtedly a “material particular”.

*Ground of Appeal (1): False*

1. Mr Chan submitted that the word “related” has a wide meaning: *Moody’s Investors Service Hong Kong Ltd v SFC*[[78]](#footnote-78). It is evident from *Hong Kong Connection* that the Vehicle Concerned was suspected of being used on the road as a criminal tool or to assist crimes (transport and supply weapons to suspected assailants for the purpose of criminal activities). The appellant tried to identify who transported the suspected criminals to the crime scene and therefore she obtained the information on the vehicle and vehicle owner by applying for a certificate. The position of the appellant is to identify those responsible for “the vehicle that was used as a criminal tool on the road”. The appellant’s purpose can be understood to be related to “traffic and transport matters”; hence, it is objectively not “false”.
2. I believe that the above submissions are far-fetched and unreasonable. I agree with the Magistrate’s view as follows[[79]](#footnote-79):

“49. … I have considered the arguments of the defence, and think that this argument cannot stand because the Department clearly aimed at asking the defendant to explain the purpose for which she applied for the vehicle certificate, rather than the purpose for which the Vehicle Concerned had been used. That is to say, the purpose is for an applicant personally; that is, does the applicant have legal proceedings related to the Vehicle Concerned? Does the applicant have matters relating to the sale or purchase of a vehicle which is related to the Vehicle Concerned? Does the applicant have any other traffic and transport related purpose related to the Vehicle Concerned? Regardless of which option provided by the Department the defendant had chosen from, the option must be related to the applicant’s own use, and the premise is that it must be applied to ‘traffic and transport related’ matters.

…

1. As far as this case is concerned, the defendant did not carry out transport matters involving the Vehicle Concerned, nor did she have a road accident with the Vehicle Concerned for which the information of the other party was required to be obtained to make a complaint. Undoubtedly, the purpose of the defendant’s application for the vehicle certificate was to obtain the name and address of the registered owner of the Vehicle Concerned and to conduct interviews and reports, but the purposes of the interviews and reports by themselves were irrelevant to ‘other traffic and transport related matters’.
2. Based on the above, it is my decision that the statement made by the defendant when applying for the vehicle certificate is a statement which is ‘false’ in a material particular.”

*Ground of Appeal (3): Knowingly*

1. The appellant tried to draw on the example of the broad interpretation of the word “friend” in *HKSAR v Wan Thomas*[[80]](#footnote-80), pointing out that the sentence “related to traffic and transport matters” has not been defined in the application program, and it is not easy for ordinary people to determine how broad “related to traffic and transport matters” is. Furthermore, it is evident from the Discussion Paper in July 2011 that even in the government’s position, the application for a vehicle registration certificate may cover a variety of situations, and in the statistics of 2010, there were nearly 3,000 applications made by media organisations. The above factors are sufficient for the court not to deny that the appellant may have subjectively believed that her purpose was “related to traffic and transport matters”.
2. It is difficult for me to accept the above submissions. First, it is difficult to generalise how broad or clear the meaning of a word or sentence is, and it must depend on the purpose and the context in which it is used. The application form reads:

“I wish to apply for a certificate of particulars of vehicle for the following traffic and transport related purpose(s):–

* Legal proceedings
* Sale and purchase of vehicle
* Other traffic and transport related matters”

In my opinion, based on the structure of the above declaration, an obvious and clear meaning is that “traffic and transport related purpose” is limited to the above three options and nothing else. In the absence of the appellant’s testimony, the only reasonable inference, in my opinion, is that the appellant interpreted it in the same way.

1. Secondly, based on the evidence before the Magistrate, I have no doubt that the purpose of the appellant’s application was not for the Vehicle Concerned itself, the road on which the vehicle was driven that night, or the way the driver drove. The purpose that the appellant requested for the information was to investigate and report on the identities of persons suspected of assisting or participating in the suspected attack on 21 July 2019.
2. Thirdly, as the Magistrate pointed out, Annex III of the Discussion Paper lists only the situations to which the legislation could have applied after it had been amended as proposed by the Department, but it is of limited use to the court’s interpretation of the prevailing law in the present case. Furthermore, the Discussion Paper reiterated the legislative purpose of regulation 4(2) of the “Regulations”; that is, “the information on the Certificate should only be used for traffic and transport related purpose”. As the Magistrate pointed out, this is clearly the intent of the legislature all along regarding the maintenance of the register of vehicles under the “Ordinance”. Therefore, that document does not actually support the appellant’s argument.
3. Fourthly, I do not deny that the appellant sought the information with good intent, but as the Magistrate pointed out, good intent is not a defence. Since the appellant was required to (and did) make/tick the following declaration in the application form after ticking the options of the purposes on the application form:

“I hereby declare that the information provided in the application form is true and completed.

I understand that if I knowingly make any statement which is false in any material particular, I shall render myself liable under Section 111(3) of Road Traffic Ordinance (Cap. 374) to a fine of

$5,000 and imprisonment for 6 months.

…

I hereby declare that I understand that the personal data provided by a certificate of particulars of vehicle should only be used for activities relating to traffic and transport matters. I have read through and understand the content of this application form, and accept all the terms and conditions stated therein.”

Therefore, the defendant must clearly know that she ought to provide true and correct information.

1. Based on the foregoing, I agree with the Magistrate’s findings as follows:

“60. As far as this case is concerned, the only reasonable and irresistible inference is that the defendant used the registration information of the vehicle certificate not only to ‘search for’ the identity of the vehicle owner, but also to conduct interviews and make reports. This is not what she stated when she made a declaration in the online application, that is, for ‘other traffic and transport related’ purpose. I am sure that when the defendant made the applications for the vehicle certificates, she clearly knew that she was making the applications for the purpose of ‘searching’, ‘interviewing’ and ‘reporting’. All of the above purposes do not fall within the three options provided by the Transport Department. Even if viewed independently or cumulatively, the purpose for which the defendant applied for the information was not related to the Vehicle Concerned itself. Furthermore, I accept the prosecution’s submission that, even taking into account the incidents reported by the defendant and the suspected offences themselves, they are not related to ‘other traffic and transport related matters’.

61. After careful consideration of all the evidence, I believe that the only reasonable and irresistible inference is that the defendant obviously applied to the Transport Department for a vehicle certificate for the Vehicle Concerned for the purpose of interviewing, reporting, and producing the programme, but those purposes clearly were not related to ‘other traffic and transport matters’. Nevertheless, the defendant still ticked the option of ‘Other traffic and transport related matters’ and made a declaration confirming that the information and purposes were true. In my opinion, the prosecution’s evidence is sufficient to prove that the defendant knowingly made a statement which was false in a material particular.”

**Conclusion**

1. An appeal is by way of “rehearing” on the evidence and testimony before a magistrate: *Chou Shih Bin v HKSAR*[[81]](#footnote-81).
2. Upon reviewing all the evidence in this case and considering the submissions of both the appellant and the respondent, I agree with the decision of the Magistrate on the appellant’s conviction. Accordingly, I dismiss the appeal against the appellant’s conviction.
3. Finally, I would like to thank both the appellant and the respondent for their assistance.

(Alex Lee)

Judge of the Court of First Instance

High Court

Mr Derek Lau, Acting SADPP, and Mr Vincent Lee, SPP of the Department of Justice, for the respondent.

Mr Derek Chan, S.C., Mr Tien Kei-rui and Mr Geoffrey Yeung, instructed by Ho Tse Wai & Partners, for the appellant.

Translation vetted by Mr. Walter Lee, solicitor.

1. Contrary to section 111(3)(a) of the Road Traffic Ordinance (the “**Ordinance**”), Cap. 374 of the Laws of Hong Kong. [↑](#footnote-ref-1)
2. See the Notice of Appeal (Form 101) dated 5 May 2021. [↑](#footnote-ref-2)
3. Pursuant to section 65C of the Criminal Procedure Ordinance, Cap. 221 of the Laws of Hong Kong. [↑](#footnote-ref-3)
4. Cap. 374E of the Laws of Hong Kong. [↑](#footnote-ref-4)
5. The content of the two vehicle certificates is the same as P1A and P1B (except for the date of issue and the wording indicating no payment was required). [↑](#footnote-ref-5)
6. Pursuant to section 65B of the Criminal Procedure Ordinance. [↑](#footnote-ref-6)
7. “Reasons for Verdict”, [19]. [↑](#footnote-ref-7)
8. Same as above, [20]. [↑](#footnote-ref-8)
9. Same as above, [27]. [↑](#footnote-ref-9)
10. Same as above, [36]. [↑](#footnote-ref-10)
11. Same as above, [40]. [↑](#footnote-ref-11)
12. Same as above, [43]. [↑](#footnote-ref-12)
13. Same as above, [44]. [↑](#footnote-ref-13)
14. Same as above, [49]. [↑](#footnote-ref-14)
15. Same as above, [50]. [↑](#footnote-ref-15)
16. Same as above, [51]. [↑](#footnote-ref-16)
17. Same as above, [59]. [↑](#footnote-ref-17)
18. Same as above, [60]. [↑](#footnote-ref-18)
19. Same as above, [61]. [↑](#footnote-ref-19)
20. Including “private car”. [↑](#footnote-ref-20)
21. Another empowering provision of the “Regulation” is section 5 (International agreements) of the Ordinance, but the latter is irrelevant to this case. [↑](#footnote-ref-21)
22. Including: the full name of the registered vehicle owner; the full residential address of the registered vehicle owner or the full address of the registered office of a body corporate; and identity documents and other information. [↑](#footnote-ref-22)
23. The fee for the certificate of particulars of the register is $45. [↑](#footnote-ref-23)
24. [1999] 1 HKC 174, 181D-G [↑](#footnote-ref-24)
25. CACV 356/2022 & CACV 357/2022; [2022] HKCA 1574, [12]. [↑](#footnote-ref-25)
26. (2006) 9 HKCFAR 574, [63]. [↑](#footnote-ref-26)
27. (2013) 16 HKCFAR 735, [12]. [↑](#footnote-ref-27)
28. (2009) 12 HKCFAR 568, [13]. [↑](#footnote-ref-28)
29. Same as above, [14]. [↑](#footnote-ref-29)
30. [63]. [↑](#footnote-ref-30)
31. (2009) 12 HKCFAR 342, [36]. [↑](#footnote-ref-31)
32. (2014) 17 HKCFAR 593, [196]. [↑](#footnote-ref-32)
33. (2017) 20 HKCFAR 524 [↑](#footnote-ref-33)
34. Section 2 of the Vehicle and Road Traffic Ordinance (13 July 1956). [↑](#footnote-ref-34)
35. Vehicle and Road Traffic (Registration and Licensing of Vehicles) Regulations 1956 (21 September 1956). [↑](#footnote-ref-35)
36. Hansard, 11 July 1956, 274-275. [↑](#footnote-ref-36)
37. Part 1 (Preliminary); Part 2 (Regulations); Part 3 (Transport Tribunals); Part 4 (Registration and Licensing of Vehicles); Part 5 (Traffic Offences); Part 6 (Use, Sale and Hire of Vehicles); Part 7 (Accidents); Part 8 Enforcement; Part 8A Testing of Motor Vehicle Emissions; Part 9 Examination of Vehicles; Part 9A Examination of Private Cars and Light Goods Vehicles at Car Testing Centres; Part 9B Designated Driving Schools; Part 10 Suspension of Licences of Motor Vehicles; Part 10A Driving Improvement Schools; Part 11 Removal, Detention and Disposal of Vehicles; Part 12 Miscellaneous (including section 111); Part 13 Private Roads; and Part 14 Expressways. [↑](#footnote-ref-37)
38. Sections 2-15 of the “Ordinance”. [↑](#footnote-ref-38)
39. “Reasons for Decision”, [42]. [↑](#footnote-ref-39)
40. Same as above, [35]. [↑](#footnote-ref-40)
41. Legislative Council Paper No. CB(1) 2647/10-11 (01). [↑](#footnote-ref-41)
42. I have noticed that the Panel on Transport of the Legislative Council has not reached any conclusion on the recommendations of the Transport and Housing Bureau in the Discussion Paper: see the minutes of the Legislative Council on 11 July 2011 (Legislative Council Paper No. CB(1) Document 220/11-12). [↑](#footnote-ref-42)
43. “Reason for Decision” [38]. [↑](#footnote-ref-43)
44. Same as above. [↑](#footnote-ref-44)
45. (2012) 15 HKCFAR 712, [27] [↑](#footnote-ref-45)
46. [1946] AC 347, 366 [↑](#footnote-ref-46)
47. (2020) 23 HKCFAR 311, [55] [↑](#footnote-ref-47)
48. [2022] HKCFA 15 [↑](#footnote-ref-48)
49. [1981] AC 800 [↑](#footnote-ref-49)
50. [2003] 2 AC 687 [↑](#footnote-ref-50)
51. [2016] 2 HKC 44, [57] [↑](#footnote-ref-51)
52. That is, Road Traffic Ordinance 1957. [↑](#footnote-ref-52)
53. Hansard, 20 November 1957, 265-266 (Objects and Reasons of the Bill). [↑](#footnote-ref-53)
54. **Article 39**

    The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article. [↑](#footnote-ref-54)
55. **Article 14 Protection of privacy, family, home, correspondence, honour and reputation**

    * 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
      2. Everyone has the right to the protection of the law against such interference or attacks.

    [cf. ICCPR Art. 17] [↑](#footnote-ref-55)
56. Came into force on 1 August 1996. [↑](#footnote-ref-56)
57. Section 3(1) of the Personal Data (Privacy) Ordinance. [↑](#footnote-ref-57)
58. “Reason for Decision”, [27]. [↑](#footnote-ref-58)
59. See Article 27 of the Basic Law and Article 16 of the Bill of Rights. [↑](#footnote-ref-59)
60. [2000] 2 AC 115, 126F-H [↑](#footnote-ref-60)
61. App No 37374/05 (unreported) (dated 14 April 2009), [38]. [↑](#footnote-ref-61)
62. Mentioned in the foregoing, 178E-G. [↑](#footnote-ref-62)
63. (2016) 19 HKCFAR 372, [134]-[135]. [↑](#footnote-ref-63)
64. [2019] PTSR 2052, [60] [↑](#footnote-ref-64)
65. “Reasons for Verdict”, [33]. [↑](#footnote-ref-65)
66. [2002] 3 HKLRD 541, 558A-B [↑](#footnote-ref-66)
67. [2007] 2 HKLRD 804, [68]-[71] [↑](#footnote-ref-67)
68. [1981] QB 767, 775G-776A [↑](#footnote-ref-68)
69. [1991] 2 QB 393, 401C-F, 403G-404C, 405C [↑](#footnote-ref-69)
70. This includes vehicle certificates issued under section 4(2) of the “Regulations”, because pursuant to section 3 of the “Interpretation and General Clauses Ordinance” (Cap. 1 of the Laws of Hong Kong): “***Ordinance*** (條例)” means “any Ordinance enacted by the Legislative Council” and “any provision or provisions of any such Ordinance or subsidiary legislation”. [↑](#footnote-ref-70)
71. “Reasons for Verdict”, [36]. [↑](#footnote-ref-71)
72. [2010] 1 WLR 2558, [30]-[31] [↑](#footnote-ref-72)
73. (2007) 10 HKCFAR 632, [22] [↑](#footnote-ref-73)
74. [1989] FCA 422, [14] [↑](#footnote-ref-74)
75. (1992) 34 FCR 348, 353-354 [↑](#footnote-ref-75)
76. “Reasons for Verdict”, [39]-[40]. [↑](#footnote-ref-76)
77. Same as above, [43]-[45]. [↑](#footnote-ref-77)
78. (2018) 21 HKCFAR 456, [35] [↑](#footnote-ref-78)
79. “Reasons for Verdict”, [49], [51]-[52]. [↑](#footnote-ref-79)
80. (2018) 21 HKCFAR 214 [↑](#footnote-ref-80)
81. (2005) 8 HKCFAR 70 [↑](#footnote-ref-81)